



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF T- LLC

DATE: SEPT. 18, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a construction consulting company, seeks to employ the Beneficiary as a regional director. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary has the education required for the offered position or the advanced degree classification. On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary has the necessary qualifications.

Upon *de novo* review, we will dismiss the appeal.

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL).¹ See section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. See section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). See section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national applies for an immigrant visa abroad or, if eligible, adjustment of status in the United States. See section 245 of the Act, 8 U.S.C. § 1255.

¹ The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is April 26, 2018. See 8 C.F.R. § 204.5(d).

II. THE BENEFICIARY'S EDUCATION

The Director determined that the Beneficiary does not have the education required for the offered job or the advanced degree classification.

A petitioner for an advanced degree professional must establish a beneficiary's possession of an "advanced degree." 8 C.F.R. § 204.5(k)(1). This term means "[a]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." 8 C.F.R. § 204.5(k)(2). The plain language of the regulations indicates that an advanced degree equivalency must include a single bachelor's degree, without combining lesser educational credentials. To demonstrate a beneficiary's possession of a bachelor's degree followed by the requisite five years of experience, a petitioner must provide "an official academic record" of the degree and letters from current or former employers describing the experience. 8 C.F.R. § 204.5(k)(3)(i)(B). A petitioner must also establish a beneficiary's possession of all DOL-certified job requirements by a petition's priority date. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

The requirements of the offered position are a U.S. bachelor's degree in quantity surveying or foreign equivalent, and 60 months of experience in the job offered of regional director or 60 months in the alternate occupation of director. An alternate field of study is not acceptable. At Part J of the labor certification, the Beneficiary listed his highest level of education as a bachelor's degree in quantity surveying completed in 1997 [redacted] in Ireland.

With the petition, the Petitioner submitted a copy of the Beneficiary's "Bachelor in Science in Surveying" diploma, with English translation, issued by The University of [redacted] in December 1998. No transcripts were submitted to support this claimed degree. In a request for evidence (RFE), the Director advised the Petitioner that he consulted the Electronic Database for Global Education (EDGE), an online database created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).² The Director noted that the Beneficiary's degree is not listed in EDGE. He indicated that the closest degree, a bachelor of science in architectural science, is comparable to three years of university study in the United States.³ He stated that all other bachelor's degree in Ireland appear to be awarded after only three years of study. He also stated that University of [redacted] "does not appear to have existed as such" and identified University College of [redacted] as the possible issuing institution of the

² AACRAO is described on its website as "a non-profit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." AACRAO, <http://www.aacrao.org/who-we-are> (last visited Sept. 4, 2019). EDGE is described on its registration page as "a web-based resource for the evaluation of foreign educational credentials." AACRAO EDGE, <http://edge.aacrao.org/info.php> (last visited Sept. 4, 2019). Federal courts have found EDGE to be a reliable, peer-reviewed source of foreign educational equivalencies. See, e.g., *Viraj, LLC v. U.S. Att'y Gen.*, 578 F. App'x 907, 910 (11th Cir. 2014) (holding that USCIS may discount submitted opinion letters and educational evaluations submitted if they differ from reports in EDGE, which is "a respected source of information").

³ AACRAO EDGE, <http://edge.aacrao.org/country/credential/bachelor-of-science-in-architectural-science?cid=single> (last visited Sept. 4, 2019). A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977).

Beneficiary's degree. The Director requested evidence of the Beneficiary's official academic record demonstrating that the Beneficiary has the required qualifying education.⁴

In response to the RFE, the Petitioner asserted that the Director erroneously confused University of [] with University College []. It stated that University of [] is currently in operation as [] and that the Beneficiary has the required bachelor's degree in quantity surveying from []. It provides an excerpt from the Wikipedia entry for University of [] which indicates that University of [] is the "degree awarding body for []". The excerpt also states that graduates of liberal degrees such as humanities or science receive an "honours Bachelor of Arts degree from the University of [] after four years of study in [] but may receive an ordinary B.A. after three years of study." It also provided some pages from the website of [].

In his decision, the Director determined that the Petitioner did not provide the requested information establishing that the Beneficiary has the education required for the offered job or the requested classification as a member of the professions holding an advanced degree. On appeal, the Petitioner asserts that the Director's decision erroneously compared the Beneficiary's four-year degree in quantity surveying to a three-year degree in architecture.⁵ It further asserts that the Director erroneously confused University of [] with University College []. It states that University of [] is currently in operation as [] and that the Beneficiary's degree was "obtained from []".

On appeal, the Petitioner submits another English translation of the Beneficiary's degree that is different from the first. The most relevant change is the description of the Beneficiary's degree as a "Bachelor of Sciences in Land Surveying." The previous translation listed his degree as a "Bachelor in Science in Surveying,"⁶ not land surveying. The Petitioner has not resolved this inconsistency with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). A full English language translation must accompany any document containing foreign language. 8 C.F.R. § 103.2(b)(3). The translator must certify that the translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the translations of the degree differ, we cannot meaningfully determine which translation is accurate. Also, neither translation states that the Beneficiary's degree is in quantity surveying as required by the terms of the labor certification.

On appeal, the Petitioner also submits transcripts issued to the Beneficiary by [] Institute of Technology in [] Ireland, in April 2019. The transcripts relate to the Beneficiary's "National Certificate in Construction Economics" program for academic years 1992/1993, 1993/1994, and

⁴ The regulations governing the EB-2 classification require the submission of an "official academic record" showing the Beneficiary's possession of a foreign equivalent degree. 8 C.F.R. § 204.5(k)(3)(i)(B). The Petitioner bears the burden to establish that all of the substantive requirements for the degree were met.

⁵ The record does not establish that Beneficiary's degree is a four-year degree. The Petitioner has not submitted transcripts or any other evidence from University of [] or [] in support of the claim that the Beneficiary's degree was a four-year degree.

⁶ The translations were performed by the same individual a little over four months apart.

1994/1995.⁷ The record contains no reference to the Beneficiary's education at [] Institute of Technology other than the submission of these transcripts. The Petitioner has not explained the significance of the National Certificate or how it relates to the Beneficiary's claimed degree. The submitted degree from University of [] is not from [] Institute of Technology and is not in the field of construction economics. The Petitioner has not resolved this inconsistency in the record with independent, objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92.

On appeal, the Petitioner also submits transcripts issued to the Beneficiary by [] Institute of Technology (now known as Technological University []) that cover two terms, 1995/1996 and 1996/1997. The transcripts, issued in April 2019, reference the Beneficiary's "Advanced Diploma in Construction Economics."⁸ They indicate that the 1995/1996 term was Year 3, and that the 1996/1997 term was Year 4. The Petitioner has not demonstrated the significance of the Advanced Diploma nor addressed the relationship of this program to the Beneficiary's claimed bachelor's degree in quantity surveying from the University of [], purportedly completed in 1997. The submitted degree from University of [] is not in the field of construction economics and is not from [] Institute of Technology. *See id.* As noted above, the Petitioner has not submitted transcripts from University of [] or [] in support of the degree that it submitted with the petition. Instead, it has submitted transcripts that appear to conflict with the degree submitted.⁹ Thus, the Petitioner has not submitted a credible "official academic record" of the Beneficiary's degree. *See* 8 C.F.R. § 204.5(k)(3)(i)(B).¹⁰

Further, on appeal, the Petitioner submits two evaluations of the Beneficiary's education. The first evaluation was issued by [], which concluded that the Beneficiary has the equivalent of a bachelor of science degree in construction management from an accredited institution in the United States. The evaluation states that he "completed coursework in general studies" at University of [] which "includes coursework in English, mathematics, and sciences, and the social sciences, which are requisite components of a university degree from an institution of higher education in the United States." However, the Beneficiary's transcripts were not issued by University of [] and the transcripts do not indicate that he took any English or science courses. Further, while he took two quantitative methods courses, it is not clear that they were mathematics-based

⁷ According to EDGE, the National Certificate in Ireland "represents attainment of a level of education comparable to 2 years of university study in the United States." *AACRAO EDGE*, <http://edge.aacrao.org/country/credential/national-certificate?cid=single> (last visited Sept. 4, 2019).

⁸ EDGE does not have an entry for an "advanced diploma" in Ireland. Instead, it lists a National Diploma which is awarded "after completion of 3 years of post-secondary study following a Leaving Certificate OR 1 year of post-secondary study following a National Certificate at an institute of technology (formerly known as regional technical colleges). Last awarded in June 2006." *AACRAO EDGE*, <http://edge.aacrao.org/country/credential/national-diploma-2?cid=single> (last visited Sept. 4, 2019). EDGE states that the "National Diploma following a National Certificate represents attainment of a level of education comparable to 3 years of university study in the United States." *Id.* While a bachelor's degree can be earned following receipt a national certificate or national diploma and additional study, the transcripts submitted do not indicate that the Beneficiary earned a bachelor's degree, and the degree from University of [] does not match the transcripts.

⁹ We note that the Beneficiary submitted an E-2 nonimmigrant visa application in 2014. On the application, he stated that he attended [] from September 1995 to April 1997 and studied quantity surveying. That two-year program does not match the transcripts submitted to the record in this case.

¹⁰ The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

courses, and there are no other math courses listed on his transcripts. The evaluation states that the courses completed and the number of credit hours earned indicate that [the Beneficiary] satisfied the requirements equivalent to those required for the completion of four years of academic studies leading to a university degree from an accredited institution of higher education in the United States.” However, the evaluation does not detail the courses taken or the credit hours earned by the Beneficiary, or indicate how many years he studied there. USCIS may treat a credentials evaluation as an advisory opinion. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). If an evaluation is inconsistent with other evidence or “is in any way questionable,” however, USCIS may reject it or give it lesser evidentiary weight. *Id.* For the reasons discussed above, we do not find the Park evaluation to be credible evidence of the Beneficiary’s education.

A second evaluation from [] concluded that the Beneficiary has the equivalent of a “Bachelor’s Degree in Quantity Surveying from a regionally accredited educational institution in the United States.” The evaluation is based on his degree issued by “University of [] [].” However, the Petitioner asserts on appeal that University of [] is known as [], not []. Therefore, it is not clear which education the evaluation is based on. Further, the evaluation does not reference any of the Beneficiary’s coursework or credit hours, or indicate the years of the Beneficiary’s attendance. The evaluation also does not provide support for its conclusions, other than references to a 1976 AACRAO publication and a 2002 U.S. Government publication, copies of which were not provided. For the reasons discussed above, we do not find the [] evaluation to be credible evidence of the Beneficiary’s education.

On appeal, the Petitioner also submits a letter from a professor at [] University [], who states that a “degree in Quantity Surveying (QS) is “very similar and even interchangeable to the degree in Construction Management (CM).” It states that “QS is a professional degree used in the UK and affiliated educational systems, such as in Australia and Hong Kong.” While the labor certification requires a bachelor’s degree in quantity surveying, the translations of the Beneficiary’s degree indicate that it is either a bachelor’s in surveying or land surveying. Neither translation states that his degree is in construction management or quantity surveying. Further, the [] letter does not address the Beneficiary’s specific educational qualifications. The letter is not probative evidence of the Beneficiary’s education and does not resolve the inconsistencies in the record created by the conflicting degree and transcripts.

In sum, the Petitioner has not resolved the inconsistencies in the record regarding the Beneficiary’s education. *See Matter of Ho*, 19 I&N Dec. at 591-592. The degree translations do not match, and the submitted transcripts do not support the degree claimed by the Beneficiary. Further, the educational evaluations and the letter from [] are not credible evidence of the Beneficiary’s education. Therefore, the Petitioner has not established by a preponderance of the evidence that the Beneficiary possessed the minimum education required by the labor certification as of the priority date. The Petitioner has also not established that the Beneficiary is qualified for the requested visa classification as a professional holding an advanced degree, as the record does not establish that he has a U.S.

master's degree or bachelor's degree or foreign equivalent (followed by five years of progressive experience in the specialty).¹¹

III. THE BENEFICIARY'S EXPERIENCE

Although not addressed by the Director, the record does not establish that the Beneficiary possessed 60 months of qualifying experience in the job offered of regional director or in the alternate occupation of director.

The labor certification states that the Beneficiary has the following experience:

- as a regional director with the Petitioner in New York from September 15, 2016, to the date the labor certification was filed on April 26, 2018;
- as a regional director with [redacted]¹² in [redacted] from July 15, 2014, to September 14, 2016;
- as an associate director with [redacted] in [redacted] Qatar, from June 15, 2013, to July 14, 2014;
- as a director with [redacted] in [redacted] France, from July 2, 2009, to June 14, 2013; and
- as a director with [redacted] in [redacted] Ireland, from September 1, 2001, to July 1, 2009.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, USCIS may consider other documentation relating to the beneficiary's experience. *Id.*

The Petitioner submitted a letter in support of the petition confirming the beneficiary's employment with the Petitioner as a director from September 2001 through July 2009. His duties included managing projects; evaluating general contracting issued packages; managing project costs and ensuring milestones were met; managing validation of contractor, supplier, and vendor valuation of changes to the contract value; providing support to clients in tracking changes and their value; managing and overseeing the work of client managers; and managing key staff.

A labor certification employer cannot rely on experience that a foreign national gained with it, unless the experience was in a job substantially different than the offered position or the employer demonstrates the impracticality of training a U.S. worker for the offered position. 20 C.F.R. § 656.17(i)(3). For these purposes, a job is substantially different from an offered position if it requires performance of the same job duties less than 50 percent of the time. 20 C.F.R. § 656.17(i)(5)(ii). On the labor certification, in response to question J.21, which asks whether the Beneficiary gained any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested, the Petitioner answered "no." In general, if the answer to question J.21 is no, then the experience with the employer may be used by the beneficiary to qualify for the proffered position if the position was not substantially

¹¹ As further detailed below, the record also does not establish that the Beneficiary obtained five years of progressive experience in the specialty.

¹² [redacted] is the former entity name of the Petitioner. The name change occurred in August 2016.

comparable and the terms of the labor certification provide that applicants can qualify through an alternate occupation. Here, the Petitioner's letter certifying the Beneficiary's employment as a director lists similar duties as those listed for the offered job. For example, similar duties include managing projects; evaluating general contracting issued packages; managing project costs and ensuring milestones were met; managing validation of contractor, supplier, and vendor valuation of changes to the contract value; providing support to clients in tracking changes and their value; managing and overseeing the work of client managers; and managing key staff.

Therefore, the experience gained with the Petitioner was substantially comparable, as he appears to have been performing the same job duties more than 50 percent of the time. According to DOL regulations, therefore, the Petitioner cannot rely on this experience for the Beneficiary to qualify for the proffered position. The record contains no other evidence of the Beneficiary's prior employment experience.

The record does not establish that the Beneficiary possessed the experience required by the labor certification as of the priority date. For this additional reason, the petition cannot be approved.

IV. ABILITY TO PAY

Although not addressed by the Director in his decision, the record does not contain regulatory required evidence of the Petitioner's ability to pay the proffered wage from the priority date on April 26, 2018, and continuing until the Beneficiary obtains lawful permanent residence.¹³ The regulation at 8 C.F.R. § 204.5(g)(2) requires that "[e]vidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements."

The Petitioner submitted evidence of wage payments it made to the Beneficiary 2017. However, the record does not contain regulatory-prescribed evidence of the Petitioner's ability to pay for 2018. Without this regulatory-required evidence, we cannot affirmatively find that the Petitioner has the continuing ability to pay the proffered wage from the priority date.

Further, USCIS records show that the Petitioner has filed multiple Form I-140 petitions for other beneficiaries. Where a petitioner has filed Form I-140 petitions for multiple beneficiaries, it must demonstrate that its job offer to each beneficiary is realistic, and that it has the ability to pay the proffered wage to each beneficiary. *See* 8 C.F.R. § 204.5(g)(2); *see also Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of a petition where a petitioner did not demonstrate its ability to pay multiple beneficiaries). Thus, the Petitioner must establish its ability to pay this Beneficiary as well as the beneficiaries of the other Form I-140 petitions that were pending or approved as of, or filed after, the priority date of the current petition.¹⁴ We do not consider the other beneficiaries for any year that the Petitioner has paid the Beneficiary a salary equal to or greater than the proffered wage.

¹³ The annual proffered wage is \$180,000.

¹⁴ The Petitioner's ability to pay the proffered wage of one of the other I-140 beneficiaries is not considered:

- After the other beneficiary obtains lawful permanent residence;

The Petitioner must document the receipt numbers, names of beneficiaries, priority dates, and proffered wages of these other petitions, and indicate the status of each petition and the date of any status change (i.e., pending, approved, withdrawn, revoked, denied, on appeal or motion, beneficiary obtained lawful permanent residence). To offset the total wage burden, the Petitioner may submit documentation showing that it paid wages to other beneficiaries. To demonstrate that it has the ability to pay the Beneficiary and the other beneficiaries, the Petitioner must, for each year at issue (a) calculate any shortfall between the proffered wages and any actual wages paid to the primary Beneficiary and its other beneficiaries, (b) add these amounts together to calculate the total wage deficiency, and (c) demonstrate that its net income or net current assets exceed the total wage deficiency. Without this information, we cannot determine the Petitioner's ability to pay the combined proffered wages of all of its applicable beneficiaries. For this additional reason, the petition cannot be approved.

V. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of T- LLC*, ID# 6246903 (AAO Sept. 18, 2019)

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- If an I-140 petition filed on behalf of the other beneficiary has been withdrawn, revoked, or denied without a pending appeal or motion; or
 - Before the priority date of the I-140 petition filed on behalf of the other beneficiary.